

APPENDIX B

PENALTIES AND APPEALS

PENALTIES AND APPEALS

California Health and Safety Code, Division 107 Statewide Health Planning and Development, Part 5 Health Data, Chapter 1 Health Facility Data.

Section 128770. Penalties; disposition.

See Appendix D.

TITLE 22, California Code of Regulations, Division 7, Chapter 10. Health Facility Data, Article 3. Required Reporting

Section 97045. Failure to File Required Reports.

Any health facility which does not file with the Office any report completed as required by this Article or by Article 8 is liable for a civil penalty of one hundred dollars (\$100) a day to be assessed and recovered in a civil action brought in the name of the people of the State of California by the Office for each day the filing of such report with the Office is delayed, considering all approved extensions of the due date as provided in Section 97051 or in Section 97214. Assessed penalties may be appealed pursuant to Section 97052. Within fifteen days after the date the reports are due, the Office shall notify the health facility of reports not yet received, the amount of liability, and potential future liability for failure to file said reports when due.

TITLE 22, California Code of Regulations, Division 7, Chapter 10. Health Facility Data, Article 4. Modification, Extension, and Appeal Processes

Section 97050. Request for Modifications to Approved Accounting and Reporting Systems.

See Section 97240 of the California Code of Regulations (Appendix E).

Section 97051. Requests for Extension Time to File Required Reports.

See Section 97241 of the California Code of Regulations (Appendix E).

Section 97052. Appeal Procedure.

(a) Any health facility affected by any determination made under the Act by the Office may appeal the decision. This appeal shall be filed with the Office within 15 business days after the date the notice of the decision is received by the health facility and shall specifically describe the matters which are disputed by the petitioner.

PENALTIES AND APPEALS

(b) A hearing on an appeal shall, at the discretion of the Director, be held before any one of the following:

- (1) An employee of the Office appointed by the Director to act as hearing officer.
- (2) A hearing officer employed by the Office of Administrative Hearings.
- (3) A committee of the Commission chosen by the chairperson for this purpose.

Authority: Section 128810, Health and Safety Code.

Reference: Section 128775, Health and Safety Code.

Section 97053. Conduct of Hearing.

(a) The hearing, when conducted by an employee of the Office appointed by the Director to serve as hearing officer or by a committee of the Commission, shall not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(b) When the hearing is conducted by an employee of the Office or by a committee of the Commission, the hearing shall be recorded by a tape recording, unless the appellant agrees to provide a certified shorthand reporter at the appellant's expense. If the appellant provides a certified shorthand reporter, the original of the transcript shall be provided directly to the Office.

(c) A copy of the tape recording or of the transcript, if made, shall be available to any person so requesting who has deposited with the Office an amount of money which the Director has determined to be sufficient to cover the costs of the copy of the tape recording or transcript.

Authority: Section 128810, Health and Safety Code.

Reference: Section 128775, Health and Safety Code.

Section 97054. Decision on Appeal.

(a) The employee, hearing officer, or committee shall prepare a recommended decision which includes findings of fact and conclusions of law.

(b) This proposed decision shall be presented to the Office for its consideration.

(c) The Office may adopt the proposed decision, or reject it and decide the matter as described in paragraph 1 below.

(1) If the Office does not adopt the proposed decision as presented, it will furnish a Notice of Rejection of Proposed Decision along with a copy of the proposed decision to appellant and, if applicable, appellant's authorized representative. The Office will provide appellant the opportunity to present written arguments to the Office. The decision of the Office will be based on the record,

PENALTIES AND APPEALS

including the hearing record, and such additional information as is provided by the appellant.

(d) The decision of the Office shall be in writing. It shall be made within 60 calendar days after the conclusion of the hearing and shall be final.

Authority: Section 128810, Health and Safety Code

Reference: Section 128775, Health and Safety Code

DISCUSSION:

See attached Appeals Process for Civil Penalties.

OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

HEALTHCARE INFORMATION DIVISION

PATIENT DISCHARGE DATA SECTION

818 K Street, Room 100

Sacramento, California 95814

(916) 323-7679 FAX (916) 327-1262



MAILING NOTICE

If you choose to submit an appeal, complete forms on pages 7 and 8 (Appendix B) and return to:

Office of Statewide Health Planning and Development
Patient Discharge Data Section
818 K Street, Room 100
Sacramento CA 95814

OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT**HEALTHCARE INFORMATION DIVISION****PATIENT DISCHARGE DATA SECTION**

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***OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT******APPEALS PROCESS FOR CIVIL PENALTIES******ASSESSED PURSUANT TO******THE HEALTH DATA AND ADVISORY COUNCIL CONSOLIDATION ACT*****RIGHT TO APPEAL**

Any health facility that has been assessed a penalty pursuant to Health and Safety Code Section 128770 may petition the Office for review of the penalty assessment. An appeal must be filed within fifteen (15) business days of the day the facility receives notification of the penalty assessment. The right to appeal is forfeited if an appeal is not either received by the Office or postmarked within fifteen (15) business days of notification of any action or decision. If an appeal is submitted, the facility is entitled to a formal administrative hearing within sixty (60) days.

HOW TO APPEAL

The Office provides a form that may be used to file an appeal. Use of this form is not mandatory, but any appeal must be in writing and must include all necessary information. An appeal must be signed by the licensee or administrator, unless they choose someone else to represent the hospital.

If the licensee or administrator chooses someone else to represent the facility in its appeal, the Office must be notified in writing of that delegation of authority. (A form for this purpose accompanies the appeal form.) The licensee or administrator should be aware that they will be bound by the statements and actions of an authorized representative.

INFORMAL PROCEDURE

For the convenience of health facilities filing appeals, the Office has established an informal appeal process. The informal procedure does not require the facility to actually attend a hearing. Review of the appeal is based on written materials submitted by the facility as well as the Office's records. If a facility elects to use the informal procedure, it still has the right to request a formal hearing if it is not satisfied with the informal decision. However, in order for a facility to take advantage of the informal procedure, it must waive its right to have a formal hearing held within sixty (60) days.

The informal procedure works as follows:

1. The facility files an appeal, requests an informal review, states the grounds for the appeal and agrees to waive the sixty (60) day limit.
2. The Chief Counsel for the Office reviews the appeal, makes a decision and notifies the facility.
3. The facility has fifteen (15) business days from the date it receives the written decision in the mail to either accept it or to reject it and request a formal hearing.
4. If a formal hearing is requested, one is scheduled.

FORMAL HEARING

Appeals are heard by the three-member Appeals Committee of the California Health Policy and Data Advisory Commission. Formal hearings are conducted substantially in conformity with the California Administrative Procedure Act. The facility may be represented by an attorney, but this is not required. The hearing will be tape recorded. The facility may, at its expense, supply a court reporter.

The Appeals Committee will consider any relevant evidence offered if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs. The Appeals Committee will prepare a recommended decision, including findings of fact and conclusions of law, and present it to the Office. The decision of the Office will be made in writing within sixty (60) days of the conclusion of the hearing. It will be the final administrative decision.

References: Health and Safety Code Sections 128770 and 128775 and Title 22, California Code of Regulations, Section 97052, 97053 and 97054.

Revised 7/1/97

**PETITION TO THE
OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT**

Facility Name _____

Address _____

Telephone _____ OSHPD Identification No. _____

Authorized Representative (if any) _____

Address _____
Street City State Zip Code

Telephone _____

Petitioner appeals the decision of the Office of Statewide Health Planning and Development dated _____.

Check one

- ☐ Petitioner wishes to use the Office's informal procedure.
We waive our right to a formal hearing within 60 days.
- ☐ Petitioner does not wish to use the informal procedure and requests a formal hearing within 60 days.

This appeal is based on the following grounds: (Attach additional pages as necessary.)

Name* _____ Title _____
Please Print Please Print

Signature _____ Date _____

Attachment(s) ☐ Yes ☐ No

*Representatives other than the facility administrator or licensee must have written authorization from the facility administrator or licensee, a copy of which must be attached to this form.

**AUTHORIZATION TO REPRESENT
FACILITY IN APPEAL**

_____ is hereby authorized to represent
(Name of Authorized Representative)

Name of Facility

before the Office of Statewide Health Planning and Development. This authorization extends to all communications between our representative and the Office, its staff, or the Appeals Committee of the California Health Policy and Data Advisory Commission, concerning this appeal. This authorization may be terminated at any time upon written notice to the Office.

_____ Facility Administrator or Licensee Name	_____ Title
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_____ Signature	_____ Date
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